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Paper No. 4

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**OFFICE OF PETITIONS**

In re Application of Ortiz, et al. :  
Application No. 09/902,348 : DECISION DISMISSING  
Filed: July 10, 2001 : PETITION  
Attorney Docket No. O&L 1000- :  
1058 :

This is a decision on the petition entitled, " PETITION UNDER 37 CFR 1.17(h)," filed October 1, 2001, requesting that the above-identified application be accorded a filing date of July 10, 2001.

The application was deposited on July 10, 2001. On August 24, 2001, the Office of Initial Patent Examination mailed a " Notice of Omitted Items in a Nonprovisional Application" informing petitioners that drawing Figure 18 appeared to be missing. The Notice set a two month nonextendable period for reply from the August 24, 2001 mailing date of the Notice.

In response to the Notice, petitioners timely filed the present petition on October 1, 2001. Petitioners request a July 10, 2001 filing date on the basis that the entire application, including the missing Figure 18, was received in the Patent and Trademark Office (PTO) on July 10, 2001. In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office generated barcode with July 10, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 19 sheets of drawings

It is noted that the date-stamped itemized return postcard refers to 19 sheets of drawings. A review of the contents of the file reveals that 19 sheets of drawings were, in fact, filed on July 10, 2001, and are presently in the file. However, **the file contains two copies of page 14/19 depicting Figure 16, but no page 16/19 depicting Figure 18.** Thus, the official file shows that no sheet of drawing containing Figure 18 was filed on July 10, 2001.

Since the petition does not request that the application be accorded the date of receipt of the sheet of drawing containing Figure 18 as the filing date (see "Notice" mailed August 24, 2001), the application will be processed with a filing date of July 10, 2001, using the 19 sheets of drawing filed on that date. Figure 18, submitted with the instant petition on October 1, 2001, will not be part of the original disclosure and will not be entered.

An amendment canceling the references to Figure 18 in the specification should be filed prior to the first Office action in order to avoid further delays in the examination of the application.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application will be returned to Initial Patent Examination Division for further processing with a filing date of July 10, 2001, and for indication on the file wrapper label that 19 sheets of drawings was present on filing.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



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